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11 Attorneys for Plaintiffs and Cross-Defendants Robert Sapien,  
12 Mary Kathleen McCarthy, Than Ho, Randy Sekany,  
13 Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano,  
14 John Mukhar, Dale Dapp, James Atkins, William Buffington  
15 and Kirk Pennington

11 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF SANTA CLARA**

14 SAN JOSE POLICE OFFICERS' ASSOCIATION,  
15 Plaintiff,

17 vs.

18 CITY OF SAN JOSE AND BOARD OF  
19 ADMINISTRATION FOR THE POLICE AND FIRE  
20 DEPARTMENT RETIREMENT PLAN OF CITY OF  
21 SAN JOSE, and DOES 1-10 inclusive,

22 Defendants.

23 AND RELATED CROSS-COMPLAINT  
24 AND CONSOLIDATED ACTIONS.

Case No. 1-12-CV-225926  
(and Consolidated Actions 1-12-CV-  
225928, 1-12-CV-226570, 1-12-CV-  
226574, and 1-12-CV-227864)

**DECLARATION OF KEN HEREDIA IN  
OPPOSITION TO MOTION FOR  
SUMMARY ADJUDICATION**

**Date: May 15, 2013**

**Time: 9:00 a.m.**

**Dept: 2**

**Judge: Hon. Patricia M. Lucas**

**Trial Date: June 17, 2013**

25 I, Ken Heredia, say:

26 1. I was employed first as a firefighter and ultimately as a battalion chief by the  
27 City of San Jose from 1969 to 1999. Throughout my employment I was a member of IAFF  
28 Local 230 and was active as an officer and/or member of the negotiating team from 1981 to

1 1996.

2 2. After I retired I was on the Board of Administration of the Police and Fire  
3 Department Plan from approximately 2000 to 2008.

4 3. In 1997 I sat as the IAFF designated arbitrator in an arbitration before Bonnie  
5 Bogue. At issue was a request by the Police and Fire Unions for an increase in the  
6 percentage of pension benefits. During the course of the hearing Edward Overton, who  
7 was the Administrator of the City Retirement Plans testified that under the Police and Fire  
8 Department Plans the employees were not responsible to pay anything for the costs which  
9 resulted from changes in the pension plans that gave credit for prior services of the  
10 employees; he stated that those prior service costs were born by the City.

11 4. During my time as a union officer and a member of the negotiating teams the  
12 issue of whether the employer costs could be reduced or the pension benefits could be  
13 enhanced when there was overfunding of the pension plan. The city representatives  
14 consistently took the position that such overfunding could only be used to reduce the  
15 contributions required of the City because the City was responsible for any unfunded  
16 actuarial side.

17 5. After I joined the Board of Administration of the Police and Fire Department  
18 Retirement Plan, on several occasions this same subject came up at board meetings. I  
19 recall specifically in discussions with Alex Gurza, Assistant City Manager, that he  
20 repeatedly maintained the responsibility for any unfunded liability of the Plan was solely  
21 that of the City's.

22 6. During my years of employment with the City there were no changes made  
23 which diminished the pension benefits and all changes, including increases in employee  
24 contribution levels were accomplished either by a negotiated Memorandum of  
25 Understanding or binding arbitration.

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1 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
2 April 19, 2013, at San Jose, California.

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4   
5 Ken Heredia

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Received  
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**WYLIE MCBRIDE,  
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